



DHE / JFW

Applicant: Janovici, Dennis) Examiner: Paul Shanowski
Serial No.: 10/791,372) Art Unit: NA
Filing Date: March 01, 2004) Date: October 3, 2007
For: "Clamp Connection and Release Device"

RENEWED PETITION UNDER 37 C.F.R. SECTION 1.181(a)

Paul Shanowski
Senior Attorney
Office of Petitions
United State Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a Renewed Petition Under 37 C.F.R. 1.181(a) following the Decision on Petition Pursuant to 37 C.F.R. Section 1.181(a) mailed September 21, 2007 (hereafter the "Decision").

The Decision referred to above dismisses Applicant's Petition filed May 17, 2007. It is submitted that the dismissal is incorrect and reconsideration and withdrawal of the dismissal is requested.

The basis for the Decision dismissing Applicant's Petition is that Applicant failed to pay \$18.00 in excess claim fees. The

Decision is incorrect because:

- (A) Applicant has paid all excess claim fees;
- (B) Even if all excess claim fees had not been paid (which they had), Applicant was entitled to cancel claims instead of paying the \$18.00 fee; and
- (C) The abandonment had nothing to do with the payment or non-payment of additional claim fees.

(A) Applicant has paid all fees for this application

Applicant has in fact paid ALL fees for ALL claims in this application.

In the Notice to File Missing Parts mailed July 2, 2004, the total additional fees required for the application, including all additional claims fees, was given as \$583.00. In Applicant's Reply mailed October 4, 2004, this total fee of \$583.00 was paid in addition to \$55.00 for a one month extension.

As such, there are 30 claims in the application, and Applicant has PAID for all 30 claims.

The Notice of Incomplete Reply mailed October 21, 2004 required an additional \$18.00. But this appears to be an error on the part of the USPTO since all claims had already been paid for.

In any event, Applicant removed two claims in response to this Notice to avoid this wrongly requested payment - see below.

Since Applicant has timely paid all fees for this application, including all additional claims fees, the Decision errs in finding that further fees were due.

(B) Applicant was entitled to cancel claims as a response

Canceling claims in response to a USPTO Notice to pay additional claim fees is a valid and proper response, contrary to the findings in the Decision.

In the Notice to File Missing Parts mailed July 2, 2004, the following direction is given by the USPTO:

"Applicant must submit the additional claim fees or *cancel the additional claims* for which fees are due."

(Italics added.)

A copy of this Notice with the relevant words highlighted is attached to this Renewed Petition.

In a Response to this Notice of July 2, 2004 which Applicant mailed on October 4, 2004, Applicant paid the additional claim fees (see above).

In the Notice of Incomplete Reply mailed October 21, 2004, it was wrongly stated that an additional claim fee of \$18.00 was required. It is submitted that this Notice was incorrect and that NO additional fees were required since all additional fees had previously been paid.

Nevertheless, in a Response mailed October 25, 2004 to this Notice of Incomplete Reply, Applicant canceled two claims, namely claims 8 and 9.

In the Notice of Incomplete Reply mailed October 21, 2004, the following direction is given by the USPTO:

"Applicant must submit the additional claim fees or *cancel the additional claims* for which fees are due."

(Italics added.)

A copy of this Notice with the relevant words highlighted is attached to this Renewed Petition.

Therefore, cancelling claims in response to a Notice to pay additional claims fees is quite proper and fully responsive, since this option is one *explicitly provided* by the USPTO in appropriate Notices in this particular situation.

The Decision in effect is inconsistent with common USPTO Notices. The USPTO cannot give an Applicant an option to follow a particular course of action, and when Applicant follows that course of action hold that it is not allowed based on a different interpretation of the rules.

In summary, Applicant has:

- (1) paid all fees for this application including additional claims fees; and
- (2) properly canceled two claims to avoid an erroneous requirement for additional claims fees.

Therefore, Applicant has fully and timely complied with all USPTO requirements and has done nothing which warrants the holding of abandonment of the application and the subsequent dismissal of the Petition to reinstate the application.

(C) Abandonment was not due to additional claim fees

As a further issue, it appears that the Notice of Abandonment mailed May 03, 2007 had *nothing* to do with payment or non-payment of the additional claim fees. This Notice of Abandonment states the abandonment was due to a failure to file a reply to the Notice to File Missing Parts. Applicant has already shown in previous papers that a reply was properly filed, and the

Decision acknowledges this fact.

The Decision states the following on page 3:

"The present application went abandoned not due to the non-receipt of a response, but rather due to the fact that Petitioner failed to submit the required \$18."

There is absolutely nothing in the record to support or corroborate this finding. In fact, the Notice of Abandonment makes no reference whatsoever to a response which was filed but incomplete. It makes no reference at all to outstanding additional claims fees. It simply states that the Abandonment was because: "No reply was received" to the Notice of July 2, 2004 (see Notice of Abandonment).

The Abandonment was therefore due to the fact that the USPTO did not process the Reply which was indeed filed, and not due to the non-payment of an additional claims fee as stated in the Decision.

Conclusions and Request

It is therefore submitted that the Decision fails to take into account the particulars of the record, makes findings inconsistent with specific USPTO directives and authorized

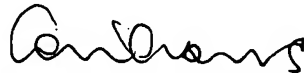
October 3, 2007

options, and misidentifies the cause of the (incorrect) holding of abandonment.

Applicant therefore requests that this application be fully reinstated and examined in the normal course.

A Return Postcard is enclosed for confirming receipt hereof.

Respectfully submitted,



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Enclosed: Copy of Notice to File Missing Parts mailed 07/02/2004
Copy of Notice of Incomplete Reply mailed 10/21/2004
Return postcard

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Office of Petitions United State Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450, VA 22313-1450 on October 3, 2007.



Colin P. Abrahams

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/791,372	03/01/2004	Dennis S. Janovici	1131-102.US

CONFIRMATION NO. 8973

FORMALITIES LETTER



OC000000013141217

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Date Mailed: 07/02/2004

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

*Filing Date Granted*Items Required To Avoid Abandonment:

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.
Applicant must submit \$ 385 to complete the basic filing fee for a small entity.
- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$65 for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this letter.

The applicant needs to satisfy supplemental fees problems indicated below.

The required item(s) identified below must be timely submitted to avoid abandonment:

- Additional claim fees of \$133 as a small entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due.

SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **\$583** for a Small Entity

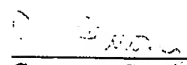
- **\$385** Statutory basic filing fee.
- **\$65** Late oath or declaration Surcharge.
- Total additional claim fee(s) for this application is **\$133**

RECEIVED

- \$43 for 1 independent claims over 3.
- \$90 for 10 total claims over 20.

Replies should be mailed to: Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

A copy of this notice MUST be returned with the reply.


Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY